REMARKS

Careful consideration has been given to the Official Action of December 15, 2003 and reconsideration of the application as amended is respectfully requested.

The invention is directed to the construction and mounting of a top rail 1 to the outer skins of an insulated double-skinned freight container in which a foam insulation 15 fills the space between the skins. The top rail is characterized by the construction of first, second and third web portions for attachment to the outer skin and the provision of an inwardly extending return portion 5 at an edge of the third portion 4 remote from the second web portion 3 for strengthening the top rail. The inwardly extending return portion 5, is embedded in and surrounded by the foam insulation between the inner and outer skins as clearly seen in Fig. 2 of the application and in accordance with the dictionary definition of the word "embedded".

In addition, an inwardly extending further web portion 6 extends perpendicular to the first web portion 2 and is also embedded in and surrounded by the foam insulation 15.

The return portion 5 and the web portion 6 extend perpendicular to one another as shown in Fig. 2. The effect is to provide a claw-like engagement of

the top rail in the foam insulation to securely anchor the top rail in the foam insulation and provide a secure connection to the upper roof skin and the outer skin of the side wall in addition to the welded connection of the walls to the respective web portions.

Claims 24-33 are pending and claims 34-37 have been added.

Claims 24 and 25 emphasize the feature of the embedding of the return portion and the further web portion in the foam material viz. that they are surrounded by the foam material.

Claims 34-37 elaborate the further features related to the return portion and the further web portion.

The Examiner has rejected claims on a multiple combination of references including Jorger, Mader, Teeter and Bonallack. The Examiner has extracted various elements from each of these references in an attempt to arrive at the claimed invention. However, none of these references shows the connection of an inwardly extending return portion or an inwardly extending web portion which is embedded in the foam insulation. The feature of embedding the inwardly projecting portions into the foam insulation is to achieve the anchoring of the top rail to the foam insulation and all of the references lack this feature and fail to show such anchoring.

The principal reference of Jorger is acknowledged by the Examiner as lacking an inwardly extending return portion. The Examiner refers to elements 1342 and 1344 of Mader as portions connected to an edge of the first and third web portions. Portions 1342 and 1344 form an angle member of which portions 1344 are connected to a respective box member 1338 and these portions 1344 are not embedded in the foam insulation. The term "embedded" as used in the application refers to an engagement of the inwardly projecting portions in which they are completely surrounded by the material into which they are embedded. In Mader, there is no embedding of the portions 1344 in the insulation but merely a superficial contact along one surface thereof. These portions are dependent for their anchoring on attachment to other elements especially the obverse connector 1336 at the inner surface of the structure.

Thus, there is a fundamental distinction between the construction and embedding of the top rail in the foam insulation. It should be further noted, that it would not be obvious to provide a return portion for the top rail in Jorger since the top rail extends on the outer skin of the structure which would block any reentrant end portion.

The Teeter patent which has been cited in combination with the above references, shows a corner piece 66 with flange portions 67 and 68. The Examiner asserts that these flange portions are "embedded" but in fact these flange portions are connected to and abut against webs of adjoining structures

and therefore are not embedded in the foam insulation as explained above in connection with the Mader reference.

Bonallack has been cited for showing return portions "embedded" in the foam insulations 6 and 19. In point of fact, the return portions are fitted between two insulated block of material and are not embedded in either one.

The Examiner has selected various features from the different references in an effort to arrive at the claimed invention but it is believed that the Examiner has gone beyond the acceptable bounds of 35 U.S.C. § 103 since the various combined elements carry out different functions and are arranged differently from one another. Accordingly, the rejection is respectfully traversed not only on the grounds that the references fail to disclose the claimed invention, but also on the grounds that the Examiner has exceeded the ambit of 35 U.S.C. § 103 in combining the references. Recent decisions have clearly established that there must be sufficient impetus to have led one of ordinary skill in the art to combine the references and arrive at the claimed invention. The Examiner cannot establish obviousness by locating references which describe various aspects of a claimed invention unless the Examiner has also provided evidence of a motivating force which would impel a person skilled in the art to do what applicant has done. See Ex parte Levengood 28 USPQ2nd 1300.

On the basis of the above and comments, it is respectfully submitted that the application is in allowable condition and favorable reconsideration is earnestly solicited.

Respectfully submitted,

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